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97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 97-863

COMPLETED

RECOVERY OF DAMAGES BY FOREIGN SEAMEN

15

SEPTEMBER 23, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 4863]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4863) to modify the maritime laws applicable to the recovery of damages by certain foreign seamen, having considered the same, report favorably thereon with amendments and recommended that the bill as amended do pass.

The amendments are as follows:

On page 2, line 10, insert ", equipment," after "supplies".

On page 2, line 24, strike "under the laws of the country—" and insert "either—".

On page 3, line 1, insert "under the laws of the nation" before "asserting".

On page 3, line 3, insert "under the laws of the nation" before "in which,".

On page 3, after line 5, add the following new sections:

SEC. 2. The amendment made by section 1 of this Act does not apply to any action arising out of an incident that occurred before the effective date of this Act.

SEC. 3. (a) Upon each departure of an offshore supply vessel of the United States, as defined in section 4426a of Title 52 of the Revised Statutes, from a port of the United States, its territories, or possessions, bound for the territorial waters or waters overlying the continental shelf of a nation other than the United States, its territories, or possessions, all of the crew of that vessel, including licensed officers, shall be citizens of the United States. If such a vessel while on a foreign voyage is for any reason deprived of the services of any member of the crew, that position or the vacancy caused by the promotion of another to that position may be filled by a person other

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than a citizen of the United States until the first call of the vessel at a port in the United States: *Provided, however*, That the position or vacancy may not be filled by a person other than a citizen of the United States within thirty days of the last departure of the vessel from a port of the United States.

(b) This section applies to the maximum extent possible not inconsistent with any statute, regulation, requirement, policy, or practice of the nation asserting jurisdiction over the waters in which the vessel is operating.

(c) This section becomes effective on April 1, 1983.

Purpose of the Legislation

The purpose of the bill is to amend section 33 of the Merchant Marine Act of 1920 (Jones Act), as well as the other maritime laws of the United States, so as to establish uniform procedural rules governing suits brought under U.S. maritime law by certain foreign nationals injured while working over the continental shelf of a foreign nation. The legislation addresses the situation where a foreign worker, injured in the territorial waters or over the continental shelf of a nation other than the United States, seeks legal relief in the courts of the U.S. The legislation provides that a suit may not be maintained in that situation under U.S. law unless the injured party has no remedy in either his country of citizenship or nationality or the country exercising jurisdiction over the waters where the incident giving rise to the injury occurred.

Background and Need for the Legislation

A basic tenet of tort law is that the rights and remedies of an injured party are governed by the laws of the place of injury. The maritime industry, unlike most business activities, does not have a constant and local site of operations. Merchant vessels pass through the territorial waters and come under the legal jurisdiction of any number of different nations. Congress and the courts have long recognized the limitations of applying the "place of injury" concept to the traditional maritime industry; hence, the more constant law of the flag has been held to govern most maritime torts.[1]

Since 1798, the Federal Government has recognized that the unique status of seamen and the special circumstances of their employment require additional protections not available to U.S. citizens generally. Beginning in 1915, Congress enacted a number of bills designed to ensure the compensation of a merchant seaman injured or killed during the course of his employment. The right of a seaman to seek redress for an injury suffered during the course of his employment is assured by section 33 of the Merchant Marine Act of 1920 (Jones Act).[2] The Death on the High Seas Act[3] provides for the recovery of damages for the negligent death of a spouse, parent, child, or dependent relative.

[1] The law of the flag has been disregarded by the courts where flags of convenience vessels are utilized or where there is a finding that the center of operations is in the United States. (See *Lauritzen* v. *Larsen*, 345 U.S. 571 (at 587).) "It is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operation, our courts on occasion have pressed beyond the formalities of more or less nominal registration to enforce against American shipowners the obligations which our law places upon them".

[2] 46 U.S.C. 688

[3] 46 U.S.C. 761–767

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For years, the Federal courts have attempted to delineate the scope of coverage of section 33 of the Jones Act. The courts have examined whether Jones Act remedies are available to a foreign worker on board a U.S.-flag vessel, to an American seaman on a foreign-owned vessel, to a foreign seaman on a foreign-flag vessel owned by U.S. interests, etc.

In recent years, a number of our courts have entertained suits under the Jones Act by foreign offshore workers injured while working above the Outer Continental Shelf of a foreign nation.[4] This approach has not been accepted by all Federal courts, however. As a result, the determination as to whether it is appropriate to commence a suit in the United States depends not on the statutory right granted by the Jones Act but rather on the happenstance of where the suit is instituted or which district judge hears the case. The Committee finds that this lack of uniform treatment is unjustified and unreasonable.

The present state of the law, as applied to the offshore oil and mineral industry, increases the cost of operation of U.S. companies due to higher insurance and legal costs associated with the need to obtain liability coverage to defend an action in two countries (the host country and the United States).[5] Insurance premiums are also increased because of the possibility of higher recovery in the United States.[6]

Lawsuits brought by foreign offshore workers not only substantially increase the insurance and litigation costs of U.S. companies but may also increase court congestion. The economic impact of these cases and the demand on court resources can be seen from the following information obtained by the Committee:

On October 29, 1981, 82 cases against 14 offshore companies were pending. These cases involved a potential liability of approximately $85 million.

A single law firm has filed suits claiming damages of $2 billion on behalf of 167 persons killed in the collapse of the Alexander Kielland drilling rig in the North Sea.

Congress, in enacting the Jones Act, was interested in assuring that an injured American seaman not be relegated to an unfamiliar foreign court. In recent years, however, U.S. courts have interpreted the Jones Act to include foreign seamen employed on U.S. vessels. The courts have cited various justifications for this inclusion—such as the difficulty for a foreign seaman to obtain jurisdiction in a foreign court over a U.S. corporation; the possibility that a court at the place of injury would not entertain the suit; the total dependence of the seaman on his employer's agent (the master) during the course of employ-

[4] In *Findlay v. Sedco Inc.* (case No. 79-51884, 157 District Court, Harris County, Texas), the representative of a British citizen injured on a rig in Canadian waters recovered $400,000 in a death on the high seas action. In *Colin, James Salt v. Sedco* (Civil Action No. B-76-147-CA, U.S. District Court, Eastern District, Texas), a Spanish citizen injured on a rig in Spanish waters recovered $350,000 in a Jones Act suit. *Contra Chiego v. Transworld Drilling Co. Ltd.*, 648 F.2d 1015 (1981).

[5] See *Castanto v. Jodsen Marine* and *Castcanto v. Brown & Root Ltd.*, Weekly Law Reports 833, July 18, 1980.

[6] See testimony of Frank J. DeSisi, Vice President for American International Underwriters, at the February 25, 1982 Merchant Marine Subcommittee hearing. "The current environment which allows foreign seamen direct access to the Jones Act and U.S. maritime remedies has a direct impact on insurance rates and premiums. This results in increased costs to the insurance buyer: in this case, the American offshore oil and gas industry operating overseas." * * * For the U.S. employer, there is the additional cost to insure for the contingency of Jones Act suits by foreign national workers, in addition to the local benefits and remedies available in the relating foreign jurisdictions."

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ment; and that, when examined from a conflicts of law approach, the U.S. has the most substantial contact with the occurrence and the greatest interest in assuring compensation of the injured party.

In the case of an offshore oil worker, the above conditions do not exist. The activity is localized, with most workers never leaving their own national waters. U.S. companies operating on a foreign Outer Continental Shelf are subject to the jurisdiction of that nation's courts and are bound by whatever other conditions are set by the nation granting permission to operate in those waters. The offshore worker is not totally dependent on the will of the vessel master for long periods of time. U.S. contacts with this type of occurrence are generally insignificant (frequently, the only U.S. connection is the corporate stock ownership of the subsidiary that owns or operates the offshore facility). Finally, there is another nation with a greater interest in regulating the conduct in question.

Discussion

H.R. 4863 will establish a jurisdictional rule for individuals whose activities, duties, and status do not readily fall within the traditional concept of "seaman". The worker in the offshore petroleum industry is not engaged in a maritime activity that takes him into waters controlled by a number of different nations or no nation. Rather, he is involved in an activity under the clear jurisdiction of one nation. In light of this relationship, the place of injury is an appropriate forum in which to seek redress. The rationale underlying the application of the "law of the flag" to maritime workers does not exist for foreign offshore energy production workers whose activities are closely related to land-based petroleum technology and are not of a true maritime nature.[7]

The legislation will place the offshore nonmaritime worker in the same legal position as his shoreside counterpart. There will be no unfairness to the offshore worker, since he can still bring suit in the place where he has chosen to live or work. Trial at the place of injury will ensure greater ease of access to sources of proof, proximity of potential witnesses, and ability to join additional parties who are not subject to suit in the U.S. The bill should discourage forum shopping and decrease U.S. court expenses and backlogs.

Scope of the Legislation

The legislation applies only to the tort remedies provided in section 33 of the Jones Act and under the maritime laws of the United States and has no impact on criminal, contractual, or other types of actions which could have a relationship to offshore resource development.

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[7] It has been suggested by some courts that the extension of Jones Act coverage to foreign workers may be a violation of the defendant's right to procedural due process. (See *DeMateos* v. *Texaco*, 562 F.2895 (3 Cir 1977).)

The Jones Act and the Death on the High Seas Act are written in language so broad as to apply to any seaman on any vessel of any nation at any location on the globe. Obviously, however, the due process clause of the Fifth Amendment places bounds upon Congressional efforts to apply American rules of decision to transactions in which the United States has no sufficient interest. Even if we assume that Texaco Inc.'s ownership of the stock of TEXPAN is a sufficient American contact to justify, for due process purposes, the application of American law to TEXPAN's Panamanian employees (a dubious assumption), we do not think Congress, in enacting the Jones Act and the Death on the High Seas Act, intended that result.

The *DeMateos* case related to a Liberian vessel owned by U.S. interests where a seaman died while on a voyage between Honduras and Costa Rica. The Committee's citation of this decision does not indicate an agreement with the decision not to extend Jones Act coverage to a seaman injured on a U.S.-owned flag of convenience vessel.

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H.R. 4863 covers a party injured as a result of an incident on a foreign Outer Continental Shelf (this can be either the person who actually suffered the physical injury giving rise to the Jones Act suit or his legal representative or survivor) who seeks damages or maintenance and cure under the Jones Act or other maritime law of the United States. The legislation requires the claimant to show that at the time the U.S. action was commenced he had no remedy under either the laws of the nation asserting jurisdiction over the area in which the incident occurred or the nation in which the injured worker maintained citizenship or residency. A U.S. national who brings a suit as the representative or survivor of a foreign injured worker would still have to show that he (the U.S. national) lacked a remedy in the nation of citizenship or residency of the injured worker, and in the nation exercising jurisdiction over the place of injury.

The courts, in interpreting the Jones Act, have generally given a broad interpretation to the phrase "seaman who shall suffer personal injury during the course of his employment". Hence, a worker performing nonmaritime functions (such as the ship's cook) falls within the scope of the Jones Act. Similarly, an injury sustained on board a vessel by an offduty seaman has been held to be a recognizable Jones Act claim.

H.R. 4863 extends only to workers injured while engaged in the "exploration, development, and production of offshore mineral or energy resources"—and should be given the same broad interpretation as section 33 of the Jones Act. The test is whether the worker is employed on an offshore vessel or facility engaged in "one of the activities enumerated in section (b)(1)(A), not whether he—at the precise moment of the injury—was involved in one of the enumerated activities.

The legislation does not preclude a suit prosecuted under U.S. Law for injuries suffered on a vessel or other offshore facility that is moving to another offshore site beyond the waters overlying the continental shelf of the host nation in whose waters it was originally operating.

The term "remedy" includes funds available under the laws of the nations described in paragraph (b)(2) for a worker, or his survivors, for a work-related injury or death. Such a remedy may be in the form of an award by a court or administrative agency; an award as a matter of law, regulations, or legally recognized practice; or any other legal method by which a nation, or its political subdivisions, assures that funds are recovered by an injured worker or his survivors. A voluntary decision not to seek an available remedy in the nations described in paragraph (b)(2) will not result in U.S. maritime tort law being applicable so the person who refused to pursue an available remedy.

ALTERNATIVE REMEDIES

Based on three days of hearings, it is clear that the nations granting off-shore oil or mineral exploration rights have procedures to compensate a worker injured in an offshore operation. Those nations not having such procedures can establish programs and require U.S. companies operating off their coast to participate in these programs.

Though it seems unlikely that a foreign worker would not have a remedy available in either his home nation or the nation exercising jurisdiction over the place of injury, the legislation provides that if

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this should occur, the worker would not be prevented by this Act from bringing a Jones Act suit in the United States.

The Committee cannot evaluate whether any given country grants an adequate remedy to its injured citizens; however, the Committee recognizes the paramount interest of a coastal jurisdiction in regulating conduct occurring in adjacent waters. In fact, the Government of Newfoundland—in the aftermath of the OCEAN RANGER disaster—decided to provide greater relief for the families of those who perished. The United States should not sit in judgment as to the adequacy of such foreign remedies.

Just as the Outer Continental Shelf Lands Act (OCSLA)[8] recognizes the interest of the Federal Government and coastal states in operations being conducted on the U.S. Outer Continental Shelf, H.R. 4863 recognizes the strong interest of foreign nations in regulating conduct occurring within their sovereign territory and directs that U.S. courts should not entertain maritime-based suits brought by foreign workers injured on another nation's Outer Continental Shelf except when no remedy is available to those workers.

IMPACT ON EMPLOYMENT RATIOS

Representatives of organized labor expressed concern to the Committee that H.R. 4863 would encourage increased hiring of foreign nationals by American offshore operators. The Committee has carefully examined this issue and is convinced that passage of this legislation will not have an adverse impact on overseas job opportunities for United States citizens. U.S. companies are usually required to hire foreign nationals by the country granting the leasehold. The policy of encouraging hiring of the host nation's citizens is followed in the United States, and the Committee has received no information to refute testimony that these foreign hiring requirements are the main factors leading to the increased employment of foreign nationals.

The Committee is also persuaded that offshore companies will continue to seek out U.S. workers because of their greater training and skills. Increases in the hiring of foreign nationals are attributable to tax law changes which discouraged U.S. workers from seeking jobs in foreign offshore operations, and to the increased hiring requirements of host nations.

SUPPLY VESSEL MANNING

The legislation imposes a special manning requirement for U.S.-flag offshore supply vessels. The Committee recognizes the need to assure employment opportunities in the offshore industry for merchant seamen. The legislation specifically provides that this provision will not apply if there exists a conflict between the manning requirements imposed by this legislation and the requirements of a host nation.

[8] Congress in enacting the Outer Continental Shelf Lands Act Amendments recognized the interest of coastal jurisdictions in regulating conduct occurring in the adjacent OCS by providing that the "civil and criminal laws of each adjacent State (now in effect or hereafter adopted, amended, or repealed) are declared to be the law of the United States for that portion of the subsoil and seabed of the Outer Continental Shelf . . . which would be within the area of the state if its boundaries were extended seaward to the outer margin of the OCS (46 U.S.C. 1132 (a)(2)(A)". This same statute recognizes the authority of the Federal Government to regulate remedies available to workers employed on the U.S. Outer Continental Shelf by providing that the compensation scheme set up by the Longshoremen's and Harbor Workers' Compensation Act shall apply to offshore workers injured in Federal waters (46 U.S.C. 1332(b)).

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U.S. TREATY OBLIGATIONS

The United States has entered into numerous treaties of friendship, commerce, and navigation with other nations. These treaties generally include "access" provisions assuring that foreign nationals will have "free and open access to the courts" of the United States. The Supreme Court has found that, while this type of provision grants procedural rights, it "does not define substantive rights but leaves them to be ascertained by the law governing the courts and administered and enforced in them". *Majorano* v. *Baltimore and Ohio Railroad*, 213 U.S. 268. The courts have generally found that the substantive rights granted by the Jones Act do not extend to foreign nationals who lack sufficient contacts with the United States. These court decisions are not a denial of equal access but rather a determination of lack of standing. The decisions generally hold that the litigant has no right which can be enforced in a U.S. court. H.R. 4863 codifies this case law and clarifies that the substantive rights granted by the Jones Act do not extend to foreign offshore workers.

The legislation is in accord with customary international law and international agreements in that it recognizes the rights of a nation to regulate activity within its territorial waters and in the Outer Continental Shelf adjacent to the coast of that nation. The present situation whereby domestic United States law is applied to actions and occurrences within the jurisdiction of a sovereign foreign nation is an unwarranted application and extraterritorial extension of U.S. law and not in accord with our treaties of friendship and navigation.

CONSTITUTIONAL ISSUES

During the hearings on H.R. 4863, some witnesses raised various issues related to the Constitutionality of this legislation. There was concern that the legislation might deny equal protection to aliens or violate the due process clause of the Constitution.

The courts, in applying the "due process" and "equal protection" clauses, have been concerned with protecting the fundamental rights of aliens. Clearly, if the proposed legislation denied resident aliens the right to recover damages merely because of their status as noncitizens, the legislation would violate the basic fairness concept embodied in the Bill of Rights. However, the proposed legislation merely requires that an injured foreign worker utilize his foreign remedy before seeking relief in a U.S. court.

The Committee finds that the proposed legislation does not abridge the fundamental right to be compensated for a work-related injury; it merely requires that the worker utilize administrative and judicial remedies available in his own nation or the host nation before seeking relief in the U.S. court system.

Numerous Federal and State statutes restrict access to various U.S. courts. For example, workman's compensation systems usually require a worker to have his claim determined by a compensation board rather than a court.

Just as a workman's compensation system can constitutionally require the utilization of an administrative agency, Congress by this legislation will require that nonresident workers utilize the administrative and judicial systems of the nation with the greater contact and interest in the incident giving rise to that worker's claim.

The point has been made that the legislation discriminates against foreign nationals. The legislation does place a foreign national in a class apart from a U.S. citizen or resident alien who is injured in a foreign offshore operation. However, the mere creation of different classes does not violate the Constitution; it is only the creation of an irrational classification system that violates the equal protection clause. The different treatment of the foreign national is justified, since he has remedies in his home nation or the host nation which he may pursue. (If a worker lacks such remedies, section 2 of the bill provides that he would not be prohibited from bringing an action in U.S. courts.) The greater interest of the host nation or the home nation of the injured worker also justifies the different treatment of a foreign offshore worker.

Courts, in determining whether to exercise jurisdiction, will examine the forum's contacts with the event giving rise to a claim and the forum's interest in resolving the dispute. The Committee notes the greater contacts and interest of the United States in resolving disputes involving U.S. citizens. These factors also support the Committee's different treatment of U.S. citizens and residents.

As the Supreme Court stated in the landmark maritime case of *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953) (at page 586): "Each nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support". The Committee recognizes the importance of assuring that U.S. citizens and resident aliens are able to recover damages for an injury, and continues the Jones Act coverage of U.S. citizens and permanent resident aliens injured in a foreign OCS accident.

Committee Action

H.R. 4863 was introduced by Mr. Biaggi of New York on October 29, 1981. Additional cosponsors are Mr. Breaux, Mr. Bowen, Mr. Davis, Mr. Emery, Mr. Fields, Mr. Forsythe, Mr. Hubbard, Mr. Lent, Mr. Livingston, Mr. Shaw, Mr. Shumway, Mr. Tauzin, Mr. Hutto and Mr. Patman.

Legislation addressing the status of foreign offshore workers under the Jones Act was introduced in the 96th Congress and was referred to the Merchant Marine and Fisheries Committee. The Merchant Marine Subcommittee held one day of hearings on that legislation and took no further action.

The current legislation was referred to the Merchant Marine and Fisheries Committee and subsequently to the Merchant Marine Subcommittee. H.R. 4863 was the subject of hearings before the Merchant Marine Subcommittee on February 25, 1982 and May 19, 1982. The Subcommittee also considered testimony presented at the Merchant Marine and Fisheries Committee hearing of March 9, 1982 on the collapse of the oil rig *Ocean Ranger*.

Witnesses at the Subcommittee hearing testifying in support of H.R. 4863 included: Paul L. Kelly, Corporate Vice President for Public Affairs of Zapata Corporation, representing the National Ocean Industries Association; Charles A. Bedell, Legislative Counsel, International Association of Drilling Contractors; Arden J. Lea, Senior Counsel, International, McDermott, Inc.; Damon B. Bankston, President and Chief Executive Officer, Tidewater, Inc.; D. Michael Hughes,

Executive Vice President, Oceaneering International, Inc.; Frank S. Meaney, Frank J. Defini, and Manuel A. Sequeira, Jr. of American International Underwriters Corporation.

The legislation was opposed by the Honorable Stephen A. Neary, Member, House of Assembly and Chairman of Public Accounts of the Provinces of Newfoundland and Labrador; Odd Kristian Rem, Director, The *Alexander L. Kielland* Disaster-At-Sea Foundation; John R. Matzell, Esq., representing the Louisiana Trial Lawyers Association; Talmage Simpkins, Executive Director, AFL–CIO Maritime Committee; and C. Arthur Rutter, Jr. of the Association of Trial Lawyers of America. The Committee also received testimony in opposition from Benton Musslewhite and Leonard C. Jacques, attorneys involved in litigation of offshore injury cases.

The Committee solicited and received comments from the Departments of State, Transportation, and Justice. Of these agencies only the Department of State cannot support the legislation on the grounds that it "could lead to claims by countries with which the United States has treaties of friendship, navigation, and commerce that the United States is not living up to its commitments under those treaties".

The Merchant Marine Subcommittee favorably reported the legislation on August 8, 1982. The Subcommittee amended the legislation by increasing the manning requirements for U.S.-flag offshore supply vessels from 75 percent of the crew to 100 percent. The Subcommittee amendment also provided that, should any vacancy occur within 30 days of a departure from a U.S. port, that vacancy would be filled by a U.S. national.

The Merchant Marine and Fisheries Committee considered and favorably reported the legislation on August 19, 1982 by a vote of 22–8.

Section-by-Section Analysis

Section 1 amends section 20 of the 1915 Welfare of American Seamen Act (as amended by section 33 of the Merchant Marine Act of 1920 (Jones Act), 46 U.S.C. 688). It provides that lawsuits under the maritime laws of the United States may not be brought under certain circumstances. The actions excluded are those which:

(a) are brought by a person or his representative for an injury suffered by a worker who is neither a citizen nor a permanent resident alien of the United States;

(b) are brought under the Jones Act or other maritime law of the United States;

(c) seek recovery in the form of maintenance and/or damages for injury or death;

(d) arise out of an incident occurring while the person injured or killed was engaged in the exploration, development, or production of offshore mineral or energy resources; and

(e) occurred in the territorial waters or waters overlying the continental shelf of a nation other than the United States.

Section (b)(1)(A) specifically eliminates vessels engaged in the transportation of offshore resources from the Jones Act exclusion, since these vessels perform traditional ocean transport services. The term "transporting those resources by vessels" is not intended to ex-

tend to offshore supply vessels having on board minerals for use as fuel or supplies for an offshore facility, or one that is carrying liquid cargo in drums, barrels, or other packages. Offshore supply vessels sometime carry fuel from an onshore site to the offshore facility for use in offshore exploration, and carry oil samples from the offshore site to a coastal site. These activities are clearly related to offshore exploration and recovery and not commercial transportation in international commerce.

H.R. 4863 is aimed at actions based on an incident that occurs while a person is engaged in the exploration, development, or recovery of offshore resources. The Committee intends that the test created by this bill is whether the worker is employed on a vessel or facility engaged in activities enumerated in section (b)(1)(A), not whether the worker at the precise moment of the injury was involved in the enumerated activities.

Subsection (b)(2) permits an offshore worker covered by section 1 to bring an action under the Jones Act, after a showing that he has no remedy available in the nation asserting jurisdiction over the place of injury nor in his nation of residency or citizenship. The availability of a remedy s determined by whether or not a remedy is available at the time a legal action is commenced in the United States. A representative of a worker (for example, in a wrongful death action) would be able to bring an action in the United States if a remedy is not available to that person in the nation asserting jurisdiction over the place of injury or in the nation of citizenship/residency of the injured worker.

Subsection (b)(2) and section 2 do not create any rights for a foreign seaman. They merely continue the present system under which a foreign offshore worker may seek a remedy under the Jones Act, but he must still prove that the suit is brought in an appropriate forum if there is a motion to dismiss for forum nonconveniens.

The possibility of a lower recovery overseas would not justify suit in the United States. If an injured foreign worker fails to utilize available foreign remedies; e.g., he fails to file his claim or allows an applicable statute of limitations to expire, or is denied a recovery after seeking a remedy, he would not be within the scope of (b)(2) since he had a method of seeking relief in one of the two nations included in section (b)(1).

Section 3 changes the manning requirements for offshore supply vessels. Under present law, 100 percent of the officers and 75 percent of the remaining crew must be U.S. citizens when the vessel leaves a U.S. port. Present law also provides that, if a vacancy occurs after the departure from the U.S. port, that vacancy may be filled by a foreign national until the vessel returns to a U.S. port where a replacement is available. Section 3 of the bill requires that, upon departure from a U.S. port, all the officers and crew shall be U.S. citizens and, if a vacancy occurs within 30 days of the date of last departure from a U.S. port, that vacancy must be filled by a U.S. citizen. If the vessel begins operating in a foreign OCS, this section will apply only to the extent it is not inconsistent with the statutes, regulations, or other requirements of the nation having jurisdiction over the waters in which the vessel is operating.

Cost of the Legislation

Pursuant to clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 4863 will not result in any additional cost to the Government.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 4863 will have no inflationary impact on prices and costs in the operation of the national economy.

Compliance With Clause 2(l)(3) of Rule XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) No oversight findings or recommendations have been made with respect to the bill.

(B) The bill does not provide new budget authority or new or increased tax expenditures.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Committee has been furnished a letter from the Director of the Congressional Budget Office with an estimate of costs, pursuant to section 403 of the Congressional Budget Act of 1974. The submission as follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 16, 1982.

Hon. Walter B. Jones,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Office has reviewed H.R. 4863, a bill to modify the maritime laws applicable to the recovery of damages by certain foreign seamen, as ordered reported by the House Committee on Merchant Marine and Fisheries, August 19, 1982.

This bill clarifies maritime tort procedure as it applies to foreign seamen. Based on review of the bill there should be no significant additional cost to the federal government as a result of this bill.

Should the committee so desire, we would be pleased to provide further details on the estimate.

Sincerely,

Raymond C. Scheppach
(For Alice M. Rivlin, Director).

Departmental Reports

The Departments of Justice, Transportation, and State submitted reports to the Committee on the proposed legislation. Those reports follow herewith:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., May 24, 1982.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request, the Department of Justice has reviewed H.R. 4863, a bill "[t]o modify the maritime laws applicable to the recovery of damages by certain foreign seamen."

The Department of Justice interposes no objection to this legislation. However we defer to other Executive Branch agencies as to whether this legislation should be enacted.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General,
Office of Legislative Affairs.

U.S. DEPARTMENT OF TRANSPORTATION,
Washington, D.C., May 27, 1982.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Transportation with respect to H.R. 4863, a bill "To modify the maritime laws applicable to the recovery of damages by certain foreign seamen."

Section 20 of the Act of March 4, 1915 (46 U.S.C. § 688), commonly referred to as the Jones Act, authorizes suit in U.S. courts for injuries or death of seamen employed on vessels under U.S. jurisdiction. The Courts have given this Act a broad interpretation so that a substantial number of foreign seamen have been awarded damages for injuries sustained in offshore work while employed on a U.S.-owned vessel.

It would appear that H.R. 4863 is intended to address a problem created by the employment of foreign personnel on U.S.-flag oil production platforms in offshore areas under the jurisdiction of foreign countries. Most U.S. production platforms are outfitted in the United States and either proceed under their own power or are towed to the drilling site. While they are underway, they are "vessels" and must meet all Coast Guard manning standards. When they are in place, they cease to be vessels and become industrial sites, manned by drilling crews. Many times, these drilling crews are foreign naitonals. However, the courts have often classified these foreign nationals as "seamen" for purposes of suits under the Jones Act. Lawsuits brought in U.S. courts often result in recoveries far in excess of what a claimant could recover under the laws of other nations. These higher recoveries increase the costs of U.S. offshore operators, and place U.S. companies at an unnecessary competitive disadvantage.

H.R. 4863 would resolve this problem by amending the Jones Act to designate the existing provision of law as subsection (a), and add a new subsection (b) that would severely limit such rights by foreign nationals. Pursuant to the bill, no action could be maintained under the Jones Act, or any other maritime law of the United States, for maintenance and cure or for damages for the injury or death of a person who is not a citizen or permanent resident alien of the United States when the incident occurred while that person was employed in the offshore mineral or energy industry, other than in the transportation of these resources by vessel, provided the incident occurred in the territorial waters or waters overlying the continental shelf of a foreign nation. However, in the event no remedy is available to such person under the laws of his own country or the country asserting jurisdiction over the area where the incident occurred, H.R. 4863 would authorize an action to be maintained in U.S. courts under the Jones Act.

The Department of Transportation supports reasonable measures to ensure the cost of competitiveness of U.S. industry. H.R. 4863 would appear to be an excellent bill on which to hold hearings with respect to this problem concerning foreign nationals employed by the U.S. mineral and oil industry. During the course of such hearings, your Committee may wish to address the following issues:

a. Whether H.R. 4863, as introduced, would encourage the displacement of U.S. seamen by foreign nationals from such employment with the U.S. mineral and oil industry. While this Department favors the general intent of the proposed legislation, we would be opposed to the use of this legislation as a vehicle to arbitrarily displace U.S. seamen from such employment.

b. Whether H.R. 4863, as introduced, is inconsistent with our existing treaty obligations. The United States is a party to a number of treaties of Friendship, Commerce and Navigation which may be inconsistent with this bill.

This Department defers to the Department of State with respect to this issue.

c. Finally, whether H.R. 4863, as introduced, would conflict with the Convention concerning the Liability of the Shipowner in Case of Sickness, Injury or Death of Seamen (T.S. 951, 54 Stat. 1693, October 24, 1936). Article 11 of that Convention pledges all signatories to ensure equality of treatment under the law for all seamen, irrespective of nationality, domicile or race, (54 Stat. 1700). This Department defers to the Department of State with respect to this issue.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

JOHN M. FOWLER,
General Counsel.

DEPARTMENT OF STATE,
Washington, D.C., June 8, 1982.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives.

DEAR MR. CHAIRMAN: In response to your letter of November 2, the Department of State has reservations concerning the advisability of

enacting H.R. 4863. Enactment of this legislation could lead to claims by countries with which the United States has treaties, of friendship, commerce and navigation that the United States is not living up to its commitments under those treaties.

U.S. treaties of friendship, commerce and navigation typically require both parties to accord to nationals and companies of either party "national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights." *E.g.*, Treaty of Friendship, Commerce and Navigation between the United States and Japan ["US-Japanese Treaty"], April 2, 1953, Art. IV(1), 4 U.S.T. 2063, T.I.A.S. No. 2863. *See also* Treaty of Friendship, Commerce and Navigation between the United States and the Federal Republic of Germany ["US-German Treaty"], October 29, 1954, Art. VI(1), 7 U.S.T. 1839, T.I.A.S. No. 3593 (which accords national treatment, but not most-favored-nation treatment). "National treatment" is typically defined as treatment "upon terms no less favorable than the treatment accorded . . . in like situations, to nationals, companies, products, vessels or other objects . . . of such Party." *E.g.*, US-Japanese Treaty, Art. XXII (1); US-German Treaty, Art. XXV (1).

The provisions of H.R. 4863, although carefully limiting the circumstances and manner in which nonresident aliens are treated less favorably than US citizens and resident aliens, could nonetheless give rise to claims by US treaty partners that the United States is not providing the national treatment in terms of access to US courts generally required by our treaties of friendship, commerce and navigation. It is also conceivable that enactment of H.R. 4863 would lead to a limited retaliation against the ability of US nationals to bring actions seeking recovery for the injury or death of a US seaman in the courts of our treaty partners, especially in situations where the US seaman is engaged in the exploration, development, or production of offshore mineral or energy resources.

For the above reasons, the Department of State cannot support the enactment of this piece of legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

With cordial regards.

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF MARCH 4, 1915

SEC. 20(*a*). That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for

damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) (1) No action may be maintained under subsection (a) or under any other maritime law if the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

(A) while that person was engaged in the exploration, development, or production of offshore mineral or energy resources—including drilling, transporting supplies, equipment, or personnel, mapping, surveying, diving, pipelaying, maintaining, repairing, or constructing, but not including transporting those resources by vessel; and

(B) in the territorial waters or waters overlying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term continental shelf has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) Notwithstanding paragraph (1) of this subsection, an action may be maintained if the person bringing the action establishes that, at the time of the commencement of the action in the United States, no remedy was available to that person either—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

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